

1-1 By: Springer, et al. (Senate Sponsor - Schwertner) H.B. No. 3074  
1-2 (In the Senate - Received from the House May 18, 2015;  
1-3 May 18, 2015, read first time and referred to Committee on Health  
1-4 and Human Services; May 22, 2015, reported favorably by the  
1-5 following vote: Yeas 9, Nays 0; May 22, 2015, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to the provision of artificially administered nutrition  
1-20 and hydration and life-sustaining treatment.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Sections 166.002(2) and (10), Health and Safety  
1-23 Code, are amended to read as follows:

1-24 (2) "Artificially administered [~~Artificial~~] nutrition  
1-25 and hydration" means the provision of nutrients or fluids by a tube  
1-26 inserted in a vein, under the skin in the subcutaneous tissues, or  
1-27 in the [~~stomach~~] gastrointestinal tract[~~]~~.

1-28 (10) "Life-sustaining treatment" means treatment  
1-29 that, based on reasonable medical judgment, sustains the life of a  
1-30 patient and without which the patient will die. The term includes  
1-31 both life-sustaining medications and artificial life support, such  
1-32 as mechanical breathing machines, kidney dialysis treatment, and  
1-33 artificially administered [~~artificial~~] nutrition and hydration.  
1-34 The term does not include the administration of pain management  
1-35 medication or the performance of a medical procedure considered to  
1-36 be necessary to provide comfort care, or any other medical care  
1-37 provided to alleviate a patient's pain.

1-38 SECTION 2. Section 166.003, Health and Safety Code, is  
1-39 amended to read as follows:

1-40 Sec. 166.003. WITNESSES. In any circumstance in which this  
1-41 chapter requires the execution of an advance directive or the  
1-42 issuance of a nonwritten advance directive to be witnessed:

1-43 (1) each witness must be a competent adult; and

1-44 (2) at least one of the witnesses must be a person who  
1-45 is not:

1-46 (A) a person designated by the declarant to make  
1-47 a health care or treatment decision;

1-48 (B) a person related to the declarant by blood or  
1-49 marriage;

1-50 (C) a person entitled to any part of the  
1-51 declarant's estate after the declarant's death under a will or  
1-52 codicil executed by the declarant or by operation of law;

1-53 (D) the attending physician;

1-54 (E) an employee of the attending physician;

1-55 (F) an employee of a health care facility in  
1-56 which the declarant is a patient if the employee is providing direct  
1-57 patient care to the declarant or is an officer, director, partner,  
1-58 or business office employee of the health care facility or of any  
1-59 parent organization of the health care facility; or

1-60 (G) a person who, at the time the written advance  
1-61 directive is executed or, if the directive is a nonwritten

2-1 directive issued under this chapter, at the time the nonwritten  
2-2 directive is issued, has a claim against any part of the declarant's  
2-3 estate after the declarant's death.

2-4 SECTION 3. Section 166.032(c), Health and Safety Code, is  
2-5 amended to read as follows:

2-6 (c) A declarant may include in a directive directions other  
2-7 than those provided by Section 166.033 and may designate in a  
2-8 directive a person to make a health care or treatment decision for  
2-9 the declarant in the event the declarant becomes incompetent or  
2-10 otherwise mentally or physically incapable of communication.

2-11 SECTION 4. Section 166.033, Health and Safety Code, is  
2-12 amended to read as follows:

2-13 Sec. 166.033. FORM OF WRITTEN DIRECTIVE. A written  
2-14 directive may be in the following form:

2-15 DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

2-16 Instructions for completing this document:

2-17 This is an important legal document known as an Advance  
2-18 Directive. It is designed to help you communicate your wishes about  
2-19 medical treatment at some time in the future when you are unable to  
2-20 make your wishes known because of illness or injury. These wishes  
2-21 are usually based on personal values. In particular, you may want  
2-22 to consider what burdens or hardships of treatment you would be  
2-23 willing to accept for a particular amount of benefit obtained if you  
2-24 were seriously ill.

2-25 You are encouraged to discuss your values and wishes with  
2-26 your family or chosen spokesperson, as well as your physician. Your  
2-27 physician, other health care provider, or medical institution may  
2-28 provide you with various resources to assist you in completing your  
2-29 advance directive. Brief definitions are listed below and may aid  
2-30 you in your discussions and advance planning. Initial the  
2-31 treatment choices that best reflect your personal preferences.  
2-32 Provide a copy of your directive to your physician, usual hospital,  
2-33 and family or spokesperson. Consider a periodic review of this  
2-34 document. By periodic review, you can best assure that the  
2-35 directive reflects your preferences.

2-36 In addition to this advance directive, Texas law provides for  
2-37 two other types of directives that can be important during a serious  
2-38 illness. These are the Medical Power of Attorney and the  
2-39 Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss  
2-40 these with your physician, family, hospital representative, or  
2-41 other advisers. You may also wish to complete a directive related  
2-42 to the donation of organs and tissues.

2-43 DIRECTIVE

2-44 I, \_\_\_\_\_, recognize that the best health care is based  
2-45 upon a partnership of trust and communication with my physician. My  
2-46 physician and I will make health care or treatment decisions  
2-47 together as long as I am of sound mind and able to make my wishes  
2-48 known. If there comes a time that I am unable to make medical  
2-49 decisions about myself because of illness or injury, I direct that  
2-50 the following treatment preferences be honored:

2-51 If, in the judgment of my physician, I am suffering with a  
2-52 terminal condition from which I am expected to die within six  
2-53 months, even with available life-sustaining treatment provided in  
2-54 accordance with prevailing standards of medical care:

2-55 \_\_\_\_\_ I request that all treatments other than those needed  
2-56 to keep me comfortable be discontinued or withheld and  
2-57 my physician allow me to die as gently as possible; OR

2-58 \_\_\_\_\_ I request that I be kept alive in this terminal  
2-59 condition using available life-sustaining treatment.  
2-60 (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

2-61 If, in the judgment of my physician, I am suffering with an  
2-62 irreversible condition so that I cannot care for myself or make  
2-63 decisions for myself and am expected to die without life-sustaining  
2-64 treatment provided in accordance with prevailing standards of care:

2-65 \_\_\_\_\_ I request that all treatments other than those needed  
2-66 to keep me comfortable be discontinued or withheld and  
2-67 my physician allow me to die as gently as possible; OR

2-  
2-

3-1 \_\_\_\_\_ I request that I be kept alive in this irreversible  
3-2 condition using available life-sustaining treatment.  
3-3 (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

3-4 Additional requests: (After discussion with your physician,  
3-5 you may wish to consider listing particular treatments in this  
3-6 space that you do or do not want in specific circumstances, such as  
3-7 artificially administered [~~artificial~~] nutrition and hydration  
3-8 [~~fluids~~], intravenous antibiotics, etc. Be sure to state whether  
3-9 you do or do not want the particular treatment.)

3-10 \_\_\_\_\_  
3-11 \_\_\_\_\_  
3-12 \_\_\_\_\_

3-13 After signing this directive, if my representative or I elect  
3-14 hospice care, I understand and agree that only those treatments  
3-15 needed to keep me comfortable would be provided and I would not be  
3-16 given available life-sustaining treatments.

3-17 If I do not have a Medical Power of Attorney, and I am unable  
3-18 to make my wishes known, I designate the following person(s) to make  
3-19 health care or treatment decisions with my physician compatible  
3-20 with my personal values:

- 3-21 1. \_\_\_\_\_
- 3-22 2. \_\_\_\_\_

3-23 (If a Medical Power of Attorney has been executed, then an  
3-24 agent already has been named and you should not list additional  
3-25 names in this document.)

3-26 If the above persons are not available, or if I have not  
3-27 designated a spokesperson, I understand that a spokesperson will be  
3-28 chosen for me following standards specified in the laws of Texas.  
3-29 If, in the judgment of my physician, my death is imminent within  
3-30 minutes to hours, even with the use of all available medical  
3-31 treatment provided within the prevailing standard of care, I  
3-32 acknowledge that all treatments may be withheld or removed except  
3-33 those needed to maintain my comfort. I understand that under Texas  
3-34 law this directive has no effect if I have been diagnosed as  
3-35 pregnant. This directive will remain in effect until I revoke it.  
3-36 No other person may do so.

3-37 Signed \_\_\_\_\_ Date \_\_\_\_\_ City, County, State of  
3-38 Residence \_\_\_\_\_

3-39 Two competent adult witnesses must sign below, acknowledging  
3-40 the signature of the declarant. The witness designated as Witness 1  
3-41 may not be a person designated to make a health care or treatment  
3-42 decision for the patient and may not be related to the patient by  
3-43 blood or marriage. This witness may not be entitled to any part of  
3-44 the estate and may not have a claim against the estate of the  
3-45 patient. This witness may not be the attending physician or an  
3-46 employee of the attending physician. If this witness is an employee  
3-47 of a health care facility in which the patient is being cared for,  
3-48 this witness may not be involved in providing direct patient care to  
3-49 the patient. This witness may not be an officer, director, partner,  
3-50 or business office employee of a health care facility in which the  
3-51 patient is being cared for or of any parent organization of the  
3-52 health care facility.

3-53 Witness 1 \_\_\_\_\_ Witness 2 \_\_\_\_\_

3-54 Definitions:

3-55 "Artificially administered [~~Artificial~~] nutrition and  
3-56 hydration" means the provision of nutrients or fluids by a tube  
3-57 inserted in a vein, under the skin in the subcutaneous tissues, or  
3-58 in the [~~stomach~~] gastrointestinal tract[+].

3-59 "Irreversible condition" means a condition, injury, or  
3-60 illness:

- 3-61 (1) that may be treated, but is never cured or  
3-62 eliminated;
- 3-63 (2) that leaves a person unable to care for or make  
3-64 decisions for the person's own self; and
- 3-65 (3) that, without life-sustaining treatment provided  
3-66 in accordance with the prevailing standard of medical care, is  
3-67 fatal.

3-68 Explanation: Many serious illnesses such as cancer, failure  
3-69 of major organs (kidney, heart, liver, or lung), and serious brain

4-1 disease such as Alzheimer's dementia may be considered irreversible  
 4-2 early on. There is no cure, but the patient may be kept alive for  
 4-3 prolonged periods of time if the patient receives life-sustaining  
 4-4 treatments. Late in the course of the same illness, the disease may  
 4-5 be considered terminal when, even with treatment, the patient is  
 4-6 expected to die. You may wish to consider which burdens of  
 4-7 treatment you would be willing to accept in an effort to achieve a  
 4-8 particular outcome. This is a very personal decision that you may  
 4-9 wish to discuss with your physician, family, or other important  
 4-10 persons in your life.

4-11 "Life-sustaining treatment" means treatment that, based on  
 4-12 reasonable medical judgment, sustains the life of a patient and  
 4-13 without which the patient will die. The term includes both  
 4-14 life-sustaining medications and artificial life support such as  
 4-15 mechanical breathing machines, kidney dialysis treatment, and  
 4-16 artificially administered nutrition and [artificial] hydration  
 4-17 [and nutrition]. The term does not include the administration of  
 4-18 pain management medication, the performance of a medical procedure  
 4-19 necessary to provide comfort care, or any other medical care  
 4-20 provided to alleviate a patient's pain.

4-21 "Terminal condition" means an incurable condition caused by  
 4-22 injury, disease, or illness that according to reasonable medical  
 4-23 judgment will produce death within six months, even with available  
 4-24 life-sustaining treatment provided in accordance with the  
 4-25 prevailing standard of medical care.

4-26 Explanation: Many serious illnesses may be considered  
 4-27 irreversible early in the course of the illness, but they may not be  
 4-28 considered terminal until the disease is fairly advanced. In  
 4-29 thinking about terminal illness and its treatment, you again may  
 4-30 wish to consider the relative benefits and burdens of treatment and  
 4-31 discuss your wishes with your physician, family, or other important  
 4-32 persons in your life.

4-33 SECTION 5. Sections 166.046(b) and (e), Health and Safety  
 4-34 Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular  
 4-35 Session, 2015, are amended to read as follows:

4-36 (b) The patient or the person responsible for the health  
 4-37 care decisions of the individual who has made the decision  
 4-38 regarding the directive or treatment decision:

4-39 (1) may be given a written description of the ethics or  
 4-40 medical committee review process and any other policies and  
 4-41 procedures related to this section adopted by the health care  
 4-42 facility;

4-43 (2) shall be informed of the committee review process  
 4-44 not less than 48 hours before the meeting called to discuss the  
 4-45 patient's directive, unless the time period is waived by mutual  
 4-46 agreement;

4-47 (3) at the time of being so informed, shall be  
 4-48 provided:

4-49 (A) a copy of the appropriate statement set forth  
 4-50 in Section 166.052; and

4-51 (B) a copy of the registry list of health care  
 4-52 providers and referral groups that have volunteered their readiness  
 4-53 to consider accepting transfer or to assist in locating a provider  
 4-54 willing to accept transfer that is posted on the website maintained  
 4-55 by the department under Section 166.053; and

4-56 (4) is entitled to:

4-57 (A) attend the meeting; ~~and~~

4-58 (B) receive a written explanation of the decision  
 4-59 reached during the review process;

4-60 (C) receive a copy of the portion of the  
 4-61 patient's medical record related to the treatment received by the  
 4-62 patient in the facility for the lesser of:

4-63 (i) the period of the patient's current  
 4-64 admission to the facility; or

4-65 (ii) the preceding 30 calendar days; and

4-66 (D) receive a copy of all of the patient's  
 4-67 reasonably available diagnostic results and reports related to the  
 4-68 medical record provided under Paragraph (C).

4-69 (e) If the patient or the person responsible for the health

5-1 care decisions of the patient is requesting life-sustaining  
 5-2 treatment that the attending physician has decided and the ethics  
 5-3 or medical committee [~~review process~~] has affirmed is medically  
 5-4 inappropriate treatment, the patient shall be given available  
 5-5 life-sustaining treatment pending transfer under Subsection (d).  
 5-6 This subsection does not authorize withholding or withdrawing pain  
 5-7 management medication, medical procedures necessary to provide  
 5-8 comfort, or any other health care provided to alleviate a patient's  
 5-9 pain. The patient is responsible for any costs incurred in  
 5-10 transferring the patient to another facility. The attending  
 5-11 physician, any other physician responsible for the care of the  
 5-12 patient, and the health care facility are not obligated to provide  
 5-13 life-sustaining treatment after the 10th day after both the written  
 5-14 decision and the patient's medical record required under Subsection  
 5-15 (b) are [~~is~~] provided to the patient or the person responsible for  
 5-16 the health care decisions of the patient unless ordered to do so  
 5-17 under Subsection (g), except that artificially administered  
 5-18 nutrition and hydration must be provided unless, based on  
 5-19 reasonable medical judgment, providing artificially administered  
 5-20 nutrition and hydration would:

5-21 (1) hasten the patient's death;  
 5-22 (2) be medically contraindicated such that the  
 5-23 provision of the treatment seriously exacerbates life-threatening  
 5-24 medical problems not outweighed by the benefit of the provision of  
 5-25 the treatment;  
 5-26 (3) result in substantial irremediable physical pain  
 5-27 not outweighed by the benefit of the provision of the treatment;  
 5-28 (4) be medically ineffective in prolonging life; or  
 5-29 (5) be contrary to the patient's or surrogate's  
 5-30 clearly documented desire not to receive artificially administered  
 5-31 nutrition or hydration.

5-32 SECTION 6. Sections 166.052(a) and (b), Health and Safety  
 5-33 Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular  
 5-34 Session, 2015, are amended to read as follows:

5-35 (a) In cases in which the attending physician refuses to  
 5-36 honor an advance directive or health care or treatment decision  
 5-37 requesting the provision of life-sustaining treatment, the  
 5-38 statement required by Section 166.046(b)(3)(A) shall be in  
 5-39 substantially the following form:

5-40 When There Is A Disagreement About Medical Treatment: The  
 5-41 Physician Recommends Against Certain Life-Sustaining Treatment  
 5-42 That You Wish To Continue

5-43 You have been given this information because you have  
 5-44 requested life-sustaining treatment[✓]\* for yourself as the  
 5-45 patient or on behalf of the patient, as applicable, which the  
 5-46 attending physician believes is not medically appropriate. This  
 5-47 information is being provided to help you understand state law,  
 5-48 your rights, and the resources available to you in such  
 5-49 circumstances. It outlines the process for resolving disagreements  
 5-50 about treatment among patients, families, and physicians. It is  
 5-51 based upon Section 166.046 of the Texas Advance Directives Act,  
 5-52 codified in Chapter 166, [~~of the~~] Texas Health and Safety Code.

5-53 When an attending physician refuses to comply with an advance  
 5-54 directive or other request for life-sustaining treatment because of  
 5-55 the physician's judgment that the treatment would be medically  
 5-56 inappropriate, the case will be reviewed by an ethics or medical  
 5-57 committee. Life-sustaining treatment will be provided through the  
 5-58 review.

5-59 You will receive notification of this review at least 48  
 5-60 hours before a meeting of the committee related to your case. You  
 5-61 are entitled to attend the meeting. With your agreement, the  
 5-62 meeting may be held sooner than 48 hours, if possible.

5-63 You are entitled to receive a written explanation of the  
 5-64 decision reached during the review process.

5-65 If after this review process both the attending physician and  
 5-66 the ethics or medical committee conclude that life-sustaining  
 5-67 treatment is medically inappropriate and yet you continue to  
 5-68 request such treatment, then the following procedure will occur:

5-69 1. The physician, with the help of the health care facility,

6-1 will assist you in trying to find a physician and facility willing  
6-2 to provide the requested treatment.

6-3 2. You are being given a list of health care providers,  
6-4 licensed physicians, health care facilities, and referral groups  
6-5 that have volunteered their readiness to consider accepting  
6-6 transfer, or to assist in locating a provider willing to accept  
6-7 transfer, maintained by the Department of State Health Services.  
6-8 You may wish to contact providers, facilities, or referral groups  
6-9 on the list or others of your choice to get help in arranging a  
6-10 transfer.

6-11 3. The patient will continue to be given life-sustaining  
6-12 treatment until the patient [he or she] can be transferred to a  
6-13 willing provider for up to 10 days from the time you were given both  
6-14 the committee's written decision that life-sustaining treatment is  
6-15 not appropriate and the patient's medical record. The patient will  
6-16 continue to be given after the 10-day period treatment to enhance  
6-17 pain management and reduce suffering, including artificially  
6-18 administered nutrition and hydration, unless, based on reasonable  
6-19 medical judgment, providing artificially administered nutrition  
6-20 and hydration would hasten the patient's death, be medically  
6-21 contraindicated such that the provision of the treatment seriously  
6-22 exacerbates life-threatening medical problems not outweighed by  
6-23 the benefit of the provision of the treatment, result in  
6-24 substantial irremediable physical pain not outweighed by the  
6-25 benefit of the provision of the treatment, be medically ineffective  
6-26 in prolonging life, or be contrary to the patient's or surrogate's  
6-27 clearly documented desires.

6-28 4. If a transfer can be arranged, the patient will be  
6-29 responsible for the costs of the transfer.

6-30 5. If a provider cannot be found willing to give the  
6-31 requested treatment within 10 days, life-sustaining treatment may  
6-32 be withdrawn unless a court of law has granted an extension.

6-33 6. You may ask the appropriate district or county court to  
6-34 extend the 10-day period if the court finds that there is a  
6-35 reasonable expectation that you may find a physician or health care  
6-36 facility willing to provide life-sustaining treatment [will be  
6-37 found] if the extension is granted. Patient medical records will be  
6-38 provided to the patient or surrogate in accordance with Section  
6-39 241.154, Texas Health and Safety Code.

6-40 \*"Life-sustaining treatment" means treatment that, based on  
6-41 reasonable medical judgment, sustains the life of a patient and  
6-42 without which the patient will die. The term includes both  
6-43 life-sustaining medications and artificial life support, such as  
6-44 mechanical breathing machines, kidney dialysis treatment, and  
6-45 artificially administered [artificial] nutrition and hydration.  
6-46 The term does not include the administration of pain management  
6-47 medication or the performance of a medical procedure considered to  
6-48 be necessary to provide comfort care, or any other medical care  
6-49 provided to alleviate a patient's pain.

6-50 (b) In cases in which the attending physician refuses to  
6-51 comply with an advance directive or treatment decision requesting  
6-52 the withholding or withdrawal of life-sustaining treatment, the  
6-53 statement required by Section 166.046(b)(3)(A) shall be in  
6-54 substantially the following form:

6-55 When There Is A Disagreement About Medical Treatment: The  
6-56 Physician Recommends Life-Sustaining Treatment That You Wish To

6-57 Stop

6-58 You have been given this information because you have  
6-59 requested the withdrawal or withholding of life-sustaining  
6-60 treatment\* for yourself as the patient or on behalf of the patient,  
6-61 as applicable, and the attending physician disagrees with and  
6-62 refuses to comply with that request. The information is being  
6-63 provided to help you understand state law, your rights, and the  
6-64 resources available to you in such circumstances. It outlines the  
6-65 process for resolving disagreements about treatment among  
6-66 patients, families, and physicians. It is based upon Section  
6-67 166.046 of the Texas Advance Directives Act, codified in Chapter  
6-68 166, [of the] Texas Health and Safety Code.

6-69 When an attending physician refuses to comply with an advance

7-1 directive or other request for withdrawal or withholding of  
7-2 life-sustaining treatment for any reason, the case will be reviewed  
7-3 by an ethics or medical committee. Life-sustaining treatment will  
7-4 be provided through the review.

7-5 You will receive notification of this review at least 48  
7-6 hours before a meeting of the committee related to your case. You  
7-7 are entitled to attend the meeting. With your agreement, the  
7-8 meeting may be held sooner than 48 hours, if possible.

7-9 You are entitled to receive a written explanation of the  
7-10 decision reached during the review process.

7-11 If you or the attending physician do not agree with the  
7-12 decision reached during the review process, and the attending  
7-13 physician still refuses to comply with your request to withhold or  
7-14 withdraw life-sustaining treatment, then the following procedure  
7-15 will occur:

7-16 1. The physician, with the help of the health care facility,  
7-17 will assist you in trying to find a physician and facility willing  
7-18 to withdraw or withhold the life-sustaining treatment.

7-19 2. You are being given a list of health care providers,  
7-20 licensed physicians, health care facilities, and referral groups  
7-21 that have volunteered their readiness to consider accepting  
7-22 transfer, or to assist in locating a provider willing to accept  
7-23 transfer, maintained by the Department of State Health Services.  
7-24 You may wish to contact providers, facilities, or referral groups  
7-25 on the list or others of your choice to get help in arranging a  
7-26 transfer.

7-27 \*"Life-sustaining treatment" means treatment that, based on  
7-28 reasonable medical judgment, sustains the life of a patient and  
7-29 without which the patient will die. The term includes both  
7-30 life-sustaining medications and artificial life support, such as  
7-31 mechanical breathing machines, kidney dialysis treatment, and  
7-32 artificially administered [artificial] nutrition and hydration.  
7-33 The term does not include the administration of pain management  
7-34 medication or the performance of a medical procedure considered to  
7-35 be necessary to provide comfort care, or any other medical care  
7-36 provided to alleviate a patient's pain.

7-37 SECTION 7. Not later than March 1, 2016, the executive  
7-38 commissioner of the Health and Human Services Commission shall  
7-39 adopt all rules necessary to implement this Act.

7-40 SECTION 8. The change in law made by this Act applies only  
7-41 to a review, consultation, disagreement, or other action relating  
7-42 to a health care or treatment decision made on or after April 1,  
7-43 2016. A review, consultation, disagreement, or other action  
7-44 relating to a health care or treatment decision made before April 1,  
7-45 2016, is governed by the law in effect immediately before the  
7-46 effective date of this Act, and that law is continued in effect for  
7-47 that purpose.

7-48 SECTION 9. This Act takes effect September 1, 2015.

7-49

\* \* \* \* \*